IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 935 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

KATHI VALKUBHAI JETHSURBHAI

Appearance:

1. Criminal Appeal No. 935 of 1986

MR HMPRACHHAK Ld. APP for Petitioner No. 1

MR NS SHETH for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 29/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

The appellant-State of Gujarat has, filed this appeal against the impugned judgment and order of acquittal dated 30.4.1986 passed by the ld. Addl. Sessions Judge, Rajkot, in Sessions Case No. 2/1986, whereby the ld. Judge acquitted both the respondents-accused for the offence under sec. 307 read with sec. 114 of IPC and under sec. 25(1)(a) of the Arms Act.

This appeal was admitted by the Division Bench of this Court on 31.10.1986 while granting leave and bailable warrant in the sum of Rs. 2000/- was issued against respondent-accused no. 2 - Kathi Pratapbhai Valkubhai but no warrant was issued against respondent-accused no. 1 - Kathi Valkubhai Jethsurbhai because he was in jail. However, the Division Bench of this Court while passing that order, made it clear that if accused no. 1 is released during the pendency of the appeal, then it would be open for the prosecution to request for issuing bailable warrant against respondent-accused no. 1. As per the order passed by the Division Bench of this court, bailable warrant was already executed and respondent - accused no. 2 has been released on bail. However, there is nothing on record to show that the respondent - accused no. 1 was released on bail during the pendency of this appeal in another case in which he was detained in jail. There is nothing on record to show that the Public Prosecutor made any request to issue bailable warrant against the respondent-accused no. 1. Be that as it may.

Brief facts of the prosecution case are as under:-

The respondent- accused no. 1 - Kathi Valkubhai Jethsurbhai was convicted and sentenced for life imprisonment for the charges of murder under sec. 302 IPC in CR NO. 52/79 before few years of the present incident in question. After being convicted by the trial court in another case, he was undergoing the sentence of life imprisonment in Sabarmati Jail, Ahmedabad. However, on 12.5.1982, he was released on bail for 7 days on the ground of marriage of his daughter. The said period of parole was further extended by the I.G.P. for 41 days. Thereafter, it was further extended for a period of 15 days by the Secretary, Home Department, State of Gujarat. Lastly, it was extended for a further period of 30 days by this court. In all, he had enjoyed 93 days parole and he had to surrender on 14.8.1982. However,

respondent-accused no. 1 did not surrender before the authority after his parole was over. He was headstrong person, therefore, inspite of best efforts, the police was not able to arrest him. However, after some time, the police gathered information that respondent-accused no. 1 had come to his house. Therefore, P.I. Shri Kara of Jasdan, called P.S.I. Shri R.H. Jadeja of Bhadla Police Station, Shri D.L. Solanki P.S.I. of L.C.B., Shri N.V. Sarvaiya of Prohibition Branch, Shri R.J. Makwana P.S.I. of Vinchiya Police Station, P.S.I. Shri M.K. Patel and second P.S.I. Shri A.I. Patel and other members of the staff. On 13.6.1985 at about 4.15a.m. at Jasdan Guest House, panchas were also kept present and all were informed of going to village Kundani for apprehending absconding respondent-accused no. 1. Thereafter, in early morning, at about 5.00a.m., all of them left for village Kundani in their police vehicle. They stopped their vehicles at some distance from the house of respondent-accused no. 1 at village Kundani. Then, they went to the house of the accused and knocked the door but nobody opened it. Thereupon, P.I. Shri Kara put his hands inside the house and opened the chain and saw two persons sleeping in falia of the house. They were respondents no. 1 and 2 i.e. father and son. Seeing the police at their door-step, respondent accused no. 2 told respondent -accused no. 1, his father, that police had come. There were 2 or 4 gun shots. They confronted with the police with sticks. Police tried to arrest the accused no. 1 but he ran away with the gun in his hand and threatened the police people with his gun that he will not spare them and his gun is not their relative. P.I. Shri Kara tried to pursue him for surrendering before the police. Instead of that, respondent-accused no. 1 gave threat to kill him. At that time, battery was flashed in the eyes of respondent-accused no. 1 and tried to take advantage of the situation. P.I. Shri Kara attempted to snatch away the gun from the hands of the accused no. 1. Thereupon, respondent-accused no. 1 pointed out gun toward P.I. Shri Kara and tried to fire from it, but before he pull the trigger and bullet comes out of it, the police officials and others, who were present there, rushed there and over powered the accused and snatched away the gun which was unloaded. After preparing the panchnama of the gun and cartridges, the accused was taken to the police station and P.I. Shri Kara lodged FIR before Bhadla Police Station. However, the respondent-accused no. 2 surrendered before the police only after obtaining anticipatory bail from the court. After completing the investigation, the police filed charge-sheet against both the respondents-accused for the offence under sec. 307

read with sec. 114 IPC and under sec. 25 (1)(a) of the Arms Act before the ld. Magistrate, who in turn, committed the case to the Court of Sessions. Before the ld. Sessions Judge, the prosecution has examined several witnesses. Most of them were police witnesses and there was no independent witness. After considering the oral as well as documentary evidence led by the prosecution, the ld. judge came to the conclusion that the prosecution has failed to prove its case against both the respondents-accused for the offence for which they were charged, beyond reasonable doubt. The Ld. Judge has found in his judgment that the accused no. 1 had received injuries with hard and blunt substance and the possibility of accused no. 1 defending him at the time of incident, cannot be ruled out. The injuries received by the respondent-accused no. 1 were not simple and the prosecution miserably failed to explain the injuries received by the respondent-accused no. 1 during the incident. It has also come on record of Jasdan Magistrate and the medical evidence that when respondent-accused no. 1 was produced before the ld. Magistrate, he was having bandage on his head and no explanation has come forward from the prosecution witness P.S.I. Shri Jadeja about it. Apart from the fact that respondent- accused no. 1 had received injuries on his head, he had received several injuries on his hands and other parts of his body. Ld. Judge has also taken serious view of the matter for not examining the respondent-accused no. 1 by the Doctor in Sabarmati Jail though the Sessions Court, Rajkot, has passed such order. Ld. Judge has also found that the evidence of the police witnesses was totally in conflict with the medical evidence. Under the circumstances, the case of the prosecution that the respondent-accused no. 1 misfired from his gun at the time of incident, cannot be believed. It is a fact that though the respondent-accused no. 1 was armed with gun, no injury whatsoever was caused to any of the police personnels who were present at the time of the incident. Regarding the role of respondent -accused no. 2, the ld. judge has rightly come to the conclusion that he being the son of the respondent-accused no. 1, the police falsely tried to involve him in the offence. There was no evidence whatsoever against the respondent-accused no. 2 for coming to the conclusion that he was involved in the offence under sec. 307 read with sec. 114 of IPC.

When the ld. trial judge has given cogent reasons for acquitting both the respondents-accused for the offence of an attempt to commit murder under sec. 307 read with sec. 114 IPC, then certainly this court

would not interfere with such order in an acquittal appeal, and that too, after a period of almost two decades of the incident.

In view of the above discussion, we do not find any substance or merits in this appeal and, accordingly, this appeal fails and is hereby dismissed. Bail bonds of respondent-accused no. 2 - Kathi Pratapbhai Valkubhai stands cancelled.

(B.J. SHETHNA, J.)

(J.R. VORA, J.)
mandora/